

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE CAM FERENBACH, MAGISTRATE JUDGE
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4 ORACLE USA, INC., a :
5 Colorado corporation; et :
6 al., :
7 : No. 2:10-cv-106-LRH-VCF
8 Plaintiffs, :
9 : April 4, 2019
10 -vs- :
11 : Las Vegas, Nevada
12 RIMINI STREET, INC., a :
13 Nevada corporation; et al., :
14 :
15 Defendants. :
16 _____ :

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TRANSCRIPT OF MOTION HEARING

APPEARANCES:

15 FOR THE PLAINTIFFS: RICHARD J. POCKER, KATHLEEN
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17 ZACHARY HILL
18 Attorneys at Law
19
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21 Attorney at Law

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23 FOR THE DEFENDANTS: MARK A. PERRY, STEPHEN C. WHITTAKER
24 and W. WEST ALLEN
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1 LAS VEGAS, NEVADA, THURSDAY, APRIL 4, 2019, 1:01 P.M.

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4 THE CLERK: This is the time set for a motion
5 hearing in the matter of Oracle USA, Incorporated, et al.,
6 versus Rimini Street, Incorporated, et al. The case number is
7 2:10-cv-106-LRH-VCF.

8 Beginning with plaintiff's counsel, please state
9 your name for the record.

10 MR. POCKER: Your Honor, on behalf of the Oracle
11 parties, I'm Richard Pocker, Boies, Schiller & Flexner. With
12 me is my partner also from Boies Schiller, Kathleen Hartnett,
13 and two other counsel representing Oracle parties, John Polito
14 and Zachary Hill, both from the law firm of Morgan Lewis.

15 THE COURT: Great. Thank you. Welcome.

16 MR. ALLEN: And good morning, your Honor. Good
17 afternoon now. West Allen from Howard & Howard on behalf of
18 Rimini Street, and with me today are Mr. Mark Perry, Mr. Chris
19 Whittaker, who will present our argument, and also present in
20 the courtroom is Mr. Jack Riley, associate general counsel for
21 Rimini Street.

22 THE COURT: Welcome. And on the phone?

23 (Unintelligible.)

24 THE COURT: Boy, Mr. Maroulis, I think you're
25 going to only be able to listen. We could not understand a

1 word you said.

2 MR. MAROULIS: That's fine.

3 THE COURT: Okay. All right. So first thing I
4 thought we'd take up is the motion to seal. That's pretty
5 straightforward.

6 And, as often happens, it seems more often than
7 not the party moving to seal did not designate the documents
8 as confidential, but it's moving to seal because the other
9 side marked them as confidential.

10 And then, you know, Rimini didn't respond to the
11 motion so I don't have really anything in the record that I
12 could base a finding of good cause to keep things sealed, but
13 if Rimini wants to, you know, let me know why it should be
14 sealed, I'll hear from them.

15 MR. PERRY: We have no objection to being
16 public, your Honor.

17 THE COURT: Oh, okay. Well, then, the motion to
18 seal is denied. Okay.

19 Okay. The next thing I thought -- I did have a
20 question for Rimini. You know, I know there was the
21 litigation -- a part of this case was brought -- you were
22 requesting a stay, all right, and so I see in the record here,
23 let's see, a senior vice-president, I believe, I'm quoting
24 from ECF 1168-4 at 2, it said,

25 "The permanent injunction entered by the

1 Court on August 15, 2018, would require Rimini to
2 further modify its support processes for Oracle
3 products. Rimini is examining its current
4 processes in good faith effort to ensure
5 compliance with the injunction notwithstanding
6 its vagueness and overbreadth, and has identified
7 a series of additional modifications that it
8 believes would bring current processes into
9 compliance with the constraints imposed by the
10 injunction."

11 It goes on to say,

12 "For example, certain processes that are now
13 automated can be done manually requiring Rimini
14 to pay additional labor costs to accomplish the
15 manual process."

16 And then the next paragraph 5, it says,

17 "I estimate it would cost Rimini at least a
18 million and up to \$4 million per year to
19 implement these modifications. These costs would
20 be incurred solely as part of Rimini's good faith
21 effort to ensure compliance with the injunction,
22 and Rimini would not incur these costs in the
23 absence of the injunction."

24 So the question is, obviously, there was no
25 stay, so is Rimini actually doing these things now?

1 MR. PERRY: Yes, your Honor. Mark Perry for
2 Rimini Street.

3 We have undertaken in two phases, if you will --
4 you know, there's the main changeover of systems in July and
5 August of 2014 which we refer to as the difference between
6 process 1.0 and process 2.0, and the Court has seen that in
7 the papers.

8 THE COURT: Sure.

9 MR. PERRY: And we'll be talking more about that
10 later.

11 THE COURT: And when was that? I'm sorry.

12 MR. PERRY: July of 2014.

13 THE COURT: Okay.

14 MR. PERRY: After the summary judgment ruling,
15 before the trial.

16 THE COURT: Okay.

17 MR. PERRY: So that was a multimillion dollar
18 reworking of the practices to eliminate at that time the two
19 features of which Oracle was complaining, what has been called
20 local hosting and cross-use, generic cross-use in the papers.

21 THE COURT: Right.

22 MR. PERRY: Fast forward, if you will, to
23 November of 2018, and I don't want to -- I hope we can come
24 back at some point and talk about what happened in
25 between those two dates.

1 THE COURT: Oh, sure, if we need to, yeah, but I
2 try to get the high points in.

3 MR. PERRY: When the injunction was entered and
4 the stay was denied, we sought a stay first from the district
5 court and then the Ninth Circuit, Rimini went back through the
6 processes in process 2.0 that may be implicated by the
7 practices in case I, that is, local hosting and cross-use.

8 There was the insurance, if you will, that the
9 environments, the development and testing environments were
10 taken -- were off and stayed off of Rimini's systems and
11 weren't set on client systems that was the local hosting piece
12 that we have some compliance costs entailed in making sure
13 that happened.

14 And then on the -- on the development of updates
15 and so forth, the generic cross-use had been addressed at
16 process -- the changeover from process 1.0 to 2.0.

17 Out of an abundance of caution, and, frankly, in
18 light of the ambiguities in the injunction, Rimini, in 2018 to
19 present, has taken on additional manual operations, in other
20 words, to avoid automated systems that may be accused by
21 Oracle as being a so-called cross-use so that there are
22 updates for one client finished, the engineer then turns to
23 the second client and goes back to the white paper and -- you
24 know, the whiteboard and starts over from scratch.

25 The declaration that the Court refers to

1 estimated at the time that would be one to \$4 million
2 essentially in labor costs, right --

3 THE COURT: Sure.

4 MR. PERRY: -- of duplication of efforts that --
5 to no end for either Rimini or the client, and, of course, to
6 no benefit to Oracle, but to ensure the --

7 THE COURT: Protecting their property interest,
8 I guess, right? That's what the lawsuit's about?

9 MR. PERRY: Well, we'll see about that.

10 THE COURT: I mean, where we stand right now,
11 right? Anyway. That's all I can look at is where we stand
12 right now.

13 MR. PERRY: Absolutely, your Honor.

14 So our understanding is that that -- you know,
15 that process has been undertaken. That process was also
16 ongoing, of course.

17 The company remains committed to compliance with
18 the injunction as far as -- again, our position, to be very
19 clear, and I think we have been very clear, is the injunction
20 goes to Rimini I, right, what was adjudicated in Rimini I --

21 THE COURT: Right.

22 MR. PERRY: -- has been addressed.

23 THE COURT: Yeah, but you see I guess maybe
24 there's a place for ambiguity here, at least I can get a
25 little confused because there's Rimini Roman numeral I and

1 Rimini Roman numeral II which I think is what you were saying,
2 but then there's the, you know, version 1.0 and 2.0, and
3 that's completely different concepts, right?

4 So it is possible, isn't it, that part of the
5 injunction Rimini I could impact what it is you're doing under
6 2.0?

7 MR. PERRY: Not really, your Honor, not as far
8 as local hosting and generic cross-use goes.

9 Local hosting -- we've moved to a remote testing
10 environment, and, of course, Oracle has had years of discovery
11 on all of this, millions and millions of pages and so forth,
12 so that the local hosting issue and the generic cross-use that
13 was the issue in Rimini I.

14 Now, the Court is correct in this sense, there
15 were -- there was a -- there was what we called the gap
16 period. There was a period of a limited number of time and
17 customers between the discovery cutoff in Rimini I and the
18 judgment in Rimini I -- or, excuse me, the changeover to
19 process 2.0 that would be addressed -- we have addressed that
20 in Rimini -- that's part of Rimini -- the Rimini II case.

21 But the injunction -- you know, our
22 compliance -- Rimini's compliance with the injunction covers
23 those customers well, and, again, as of July or August of
24 2014, we think that the changeover to 2.0 had been complete
25 whether or not the customers were included.

1 THE COURT: Okay. So let me ask a question.
2 Who's going to argue over on this side? Mr. Pocker. Okay.

3 Well, I just -- this is a question, you don't
4 need to make a whole argument, but let's assume for the sake
5 of discussion that what -- gosh -- Mr. Perry just said --
6 sorry, too many names -- what Mr. Perry just said is true, you
7 know, but I can understand that, you know, Oracle wants to
8 verify somewhat that what he said is true. But if it's true
9 what he said, would that be compliance with the injunction,
10 just assuming it's true?

11 MR. POCKER: Would it be compliance with the
12 injunction? In our estimation, no, and then, again, that's
13 with the caveat that we don't know specifically what they've
14 been doing since November to now.

15 I mean, a lot of the arguments are about changes
16 made in 2014, that type of thing. We're entitled -- we have a
17 valid injunction in force.

18 THE COURT: Right.

19 MR. POCKER: And we need to know what that
20 process is now.

21 Now, there's a --

22 THE COURT: Okay, I didn't ask you what you --
23 I'm just trying to take this --

24 (Simultaneous indecipherable
25 conversation.)

THE COURT: Okay.

1 MR. POCKER: Okay. It doesn't solve the
2 problem, your Honor. There is additional information we would
3 need. And I think your original question, assuming this is
4 true, that's a mighty big assumption in light of the history
5 of this case.

6 THE COURT: Okay. That's fine.

7 I'm not -- I'm not asking you to admit it's
8 true. I'm just trying to say if Mr. Perry got up there and
9 said, you know, "We've got 2.0 running, there's no local
10 hosting, there's no cross-use, we were using manual systems,
11 we're spending millions of dollars to make sure none of this
12 is going on," if that's true, I'm not saying you have to
13 believe him, would that be compliance with the injunction, or
14 what else could they -- do they need to be doing?

15 MR. POCKER: Here's the problem. They have
16 defined -- well, they have a creative interpretation of what
17 Rimini I was about, what the Ninth Circuit held, and what the
18 injunction in Rimini I means.

19 THE COURT: Right.

20 MR. POCKER: And, as a result, there are --
21 you've seen the injunction, it's multi-pages.

22 THE COURT: Right, I've got a copy.

23 MR. POCKER: It doesn't focus on particular
24 mechanisms by which the infringement occurred. It addresses
25 processes and this notion of cross-use.

1 And you'll see this in Rimini's papers, they
2 define cross-use or feign confusion about what it means, and
3 it's clearly at odds with what the Court, the Ninth Circuit
4 and Oracle is saying. So I --

5 THE COURT: Hold on, hold on. Let me just say
6 this.

7 I mean, cross-use -- he said cross-use means,
8 you know, we can't use an automated system. When we have a
9 new client, we have to start over at step one and recreate the
10 whole process that we're doing for each client.

11 Now, is that a sufficient definition of
12 cross-use, or is it -- you define it as something else?

13 MR. POCKER: They're not -- they are not
14 permitted under the Court's and Ninth Circuit's definition of
15 cross-use, as we've quoted in our pleadings, to use the
16 license and the work done under a license for one client for
17 the -- use it for --

18 THE COURT: Other clients.

19 MR. POCKER: -- other clients.

20 THE COURT: He just said, "We're not doing
21 that." That's what he said just now in court. As an officer
22 of the court, he told me, "We're not doing that. Each client
23 we're taking over, you know, we're starting with a
24 whiteboard," I think he said.

25 Now, I'm not saying you have to accept it as

1 true, I'm just saying, if it were true, would it be
2 compliance.

3 MR. POCKER: That question can't be definitively
4 answered because of other practices in association with the
5 way Rimini 2.0 version is implemented that we believe violate
6 the copyright.

7 They seem -- backing up a minute here, they want
8 you to start with the premise that the changes in 2014, Rimini
9 2.0, somehow solved all the infringement problems that
10 ultimately led to the injunction in Rimini I. That's not --

11 THE COURT: Well, wait a minute.

12 MR. POCKER: -- true.

13 THE COURT: I think he was saying that was the
14 start of it, and then after -- in November, then, you know,
15 when they were trying to get the stay and they lost, then they
16 did a whole lot of other things. That's what they're saying
17 they did.

18 Now, I know you don't trust them, but I don't
19 think he said to me, "What we did in '14 amounts to compliance
20 with the injunction."

21 Is that what you're saying?

22 MR. POCKER: He was saying that. If he's not,
23 then, that's a sea change in Rimini Street's position here.

24 THE COURT: Well, let's find out.

25 Mr. Perry, I mean, what I heard was you said it

1 started in '14, and you did these things, but then once the
2 stay was denied, you've taken on all this other extra work,
3 right?

4 MR. PERRY: That's what I said.

5 You have to take in it two steps, your Honor.

6 THE COURT: Right.

7 MR. PERRY: 2014 was the changeover from what's
8 essentially a local system to a remote system.

9 So local -- well, let's take these in two
10 pieces, right?

11 Local hosting, solved in 2014 because we took
12 all the development and production environments off the Rimini
13 servers and moved them either to the cloud or to client
14 servers. So the one half of the case, if you will, that's
15 done in 2014.

16 THE COURT: Okay. Let's hold on.

17 You dispute that.

18 MR. POCKER: I do, your Honor.

19 THE COURT: Okay. Let's find out.

20 MR. POCKER: If --

21 THE COURT: Hold on. Go ahead.

22 MR. POCKER: All right. I'll give the
23 explanation.

24 THE COURT: Sure.

25 MR. POCKER: What Rimini I decided is that under

1 the licenses interpreted by the Court, and the consequences of
2 jury trial is that under the license agreements the software
3 has to be housed on the customer's facilities.

4 THE COURT: So cloud is not good enough? Is
5 that your point.

6 MR. POCKER: And my point is that that was the
7 violation, one of the infringement violations in Rimini I.

8 Rimini Street -- it's a little sleight of hand
9 here. Now, they've said, "Well, it's not on our systems any
10 more."

11 THE COURT: Right.

12 MR. POCKER: Compliance with the injunction and
13 compliance with the rulings in Rimini I would require that it
14 be on facilities, the facilities of the customer.

15 THE COURT: Customer. Okay. I got that.

16 Do you agree with that?

17 MR. PERRY: No, your Honor.

18 THE COURT: Okay.

19 MR. PERRY: Mr. Pocker just highlighted, I
20 think, the reason that this is not a discovery motion at all.
21 That is one of the merits disputes in Rimini II, the second
22 lawsuit --

23 THE COURT: Right.

24 MR. PERRY: -- that's pending on summary
25 judgment, whether a cloud server is the client's facility or

1 not within the meaning of the license. That was not decided
2 in Rimini I. The cloud wasn't even an issue in Rimini I.
3 It's not part of the judgment, it didn't go to the Ninth
4 Circuit.

5 We understand Oracle now takes the position that
6 the environments being off Rimini servers or being on the
7 cloud is not the client's facilities.

8 THE COURT: Right.

9 MR. PERRY: That's pending before Judge Hicks on
10 a motion for summary judgment, but it's not in the first case,
11 it's in the second case.

12 THE COURT: Right.

13 MR. PERRY: And we can't be held in contempt in
14 the first case for doing something that has never been
15 adjudicated, and that dispute -- and we're supposed to
16 cross-use, too.

17 When Mr. Pocker stood up and said that he
18 disagreed with what I just said --

19 THE COURT: The whiteboard, yeah.

20 MR. PERRY: -- they take the position that if
21 the engineer with the whiteboard has any knowledge in his
22 head --

23 THE COURT: Yeah.

24 MR. PERRY: -- that that constitutes cross-use.

25 THE COURT: Right.

1 MR. PERRY: Well, in addition to being crazy,
2 your Honor, that is, again, a proposition that's at issue in
3 the summary judgment motions in Rimini II.

4 In other words, the new definition of cross-use
5 that Oracle came up with, the second case, it hasn't been
6 decided by any judge yet.

7 The cloud got half decided by Judge Hoffman, who
8 is here today, in a discovery dispute --

9 THE COURT: No, he's here because he's getting
10 Rimini II, and we realize --

11 MR. PERRY: We understand, that's another
12 motion.

13 THE COURT: Okay.

14 MR. PERRY: And, you know, to jump to the bottom
15 line of the Rimini position here, we understand the
16 injunction, we're very much attempting to comply with it. We
17 believe we are in compliance with it.

18 This motion is an effort to reopen discovery in
19 either case, or in both cases, to litigate the second case,
20 not the first case.

21 What Mr. Pocker just said he disagreed with me
22 on both local hosting and cross-use is not because of anything
23 decided by Judge Hicks or the Ninth Circuit in this case, it's
24 because of disputes that Oracle has raised in the second case.

25 We're happy to have those decided. They're

1 pending -- there are seven motions for summary judgment fully
2 briefed sitting somewhere in this courthouse.

3 THE COURT: They're probably up in Reno.

4 MR. PERRY: Or in Reno, with thousands and
5 thousands of pages of exhibits.

6 THE COURT: Right.

7 MR. PERRY: And our concern -- you know, this is
8 a discovery dispute, your Honor, but it's a discovery dispute
9 predicate to a contempt proceeding, and the premise of
10 Oracle's submission is that Rimini can be held in contempt,
11 for example, for hosting documents on the cloud or
12 environments on the cloud, and cloud computing has never been
13 adjudicated in this case, and that will be adjudicated, but
14 it's not a contempt proceeding, and therefore it's not a
15 discovery dispute, and that's our position in a nutshell
16 (unintelligible).

17 THE COURT: I think this has been real helpful.

18 Why don't you sit down. I'm going to kind of go
19 into a different area, Mr. Pocker, and then we'll -- this will
20 all sort of be prelude, and I'll let you guys --

21 MR. POCKER: Your Honor, can I have one --

22 THE COURT: Go ahead, sure.

23 MR. POCKER: I just want to highlight.
24 Mr. Perry says none of this -- none of our positions were
25 resolved in the first Rimini case, and the very injunction for

1 which we --

2 THE COURT: Hold on. Let me -- hold up here.
3 What page are you on there?

4 MR. POCKER: This is the injunction. It would
5 be page 2 of 4. This is --

6 THE COURT: He's got a five-page injunction,
7 permanent injunction against defendant Rimini Street and Seth
8 Ravin. It's docket 1065. Is that the right one or --

9 MR. POCKER: This is 1166, the injunction that's
10 currently in effect and filed on August 15th.

11 THE COURT: Sorry, I pulled the wrong
12 injunction. Let me just -- I can pull it up on the computer.

13 Does this injunction you're quoting override the
14 one that I'm looking at?

15 MR. POCKER: Yeah, the one was entered back in
16 2016, and that was the one that was vacated by the Ninth
17 Circuit, and now we're back at the 2018 version.

18 THE COURT: Okay. I had -- someone gave me the
19 wrong injunction. So what number is that?

20 MR. POCKER: I'm looking at page 2 of this
21 injunction, and it's broken down, it's --

22 THE COURT: 1166.

23 MR. POCKER: -- strictures about product
24 category, PeopleSoft --

25 THE COURT: PeopleSoft, I'm there.

1 MR. POCKER: Paragraph 5,
2 "Rimini Street shall not reproduce, prepare
3 derivative works from, or use PeopleSoft software or
4 documentation on, with, or to any computer systems
5 other than a specific licensee's own computer systems."

6 THE COURT: Right.

7 MR. POCKER: Now, that's an enforceable portion
8 of the injunction which is different than Mr. Perry's
9 interpretation of the fix that Rimini Street has done.

10 He's acknowledged there's cloud hosting and all
11 the rest.

12 THE COURT: Right. Well, then, let me ask you
13 this, Mr. Pocker.

14 MR. POCKER: Sure.

15 THE COURT: If they've admitted in open court
16 that they're using the cloud server to do what they're doing,
17 and you say this is a violation of paragraph 4, why do you
18 need more discovery to go against -- go against them? I mean,
19 they've said that's what they're doing.

20 MR. POCKER: Well, I'm not so sure they've said
21 that.

22 THE COURT: Well, I'll ask Mr. Perry again. Are
23 you using the cloud server? I mean, that's what you're doing.
24 That's what you're litigating in Rimini II, right?

25 MR. PERRY: For certain clients, your Honor,

1 yes.

2 And, again, Oracle has had three years of
3 discovery, including 850 depositions or document subpoenas to
4 our clients. They know exactly who is on --

5 THE COURT: And that's in Rimini II.

6 MR. PERRY: Yes, sir.

7 THE COURT: So you already got that discovery in
8 Rimini II.

9 MR. POCKER: Well, that's the problem, your
10 Honor, because we also sought to amend and modify the
11 protective order in Rimini II so we could use all that in
12 Rimini I, and Rimini -- and Oracle -- while Rimini refuses to
13 consent to that. We've had to file a motion to do that. It's
14 in front of Judge Hoffman now.

15 So, if anything, what this shows is any
16 representation made needs verification. I don't want to quote
17 Ronald Reagan, but trust but verify.

18 THE COURT: I know, that's where I was trying to
19 go with this. You see, I'm hoping we could come up with some
20 sampling technique or something that you could verify what you
21 need to verify.

22 But, you know, we're a little ways from even --
23 but here's the problem for me now. Suppose I were to say,
24 okay, you've already done the discovery in Rimini II, so
25 rather than redoing discovery here and spending all that time

1 and money and effort, just go ahead and use the discovery you
2 got in Rimini II in your injunction enforcement things here.

3 MR. POCKER: There's only one problem with
4 that --

5 THE COURT: What's that?

6 MR. POCKER: -- your Honor. The injunction was
7 entered in November of 2018. Discovery in Rimini II closed in
8 January 2018. If you'll notice, our motion is narrowly
9 tailored --

10 THE COURT: Right.

11 MR. POCKER: -- to target that period.

12 Now we're going to address the other discovery
13 we could use to make our case in Rimini I with the motion for
14 protective -- modified protective order.

15 So that's where we're -- we're not asking for
16 very much, and nothing said here in court today, when you pair
17 it up with the representations that you began the hearing
18 quoting from --

19 THE COURT: Right.

20 MR. POCKER: -- give us any comfort that without
21 seeing the actual evidence of how do they operate this
22 business post November 2018 that they're in compliance with
23 the injunction, and the difference between --

24 THE COURT: Let me ask a question. So the
25 discovery in Rimini II did not include the time period after

1 November of '18?

2 MR. POCKER: No, no. Rimini II -- we finished
3 up the discovery last January something, and then --

4 THE COURT: So the relevance -- so, yeah, the
5 relevant discovery has to be for the time period after --
6 anything they did before November '18 could not have been in
7 violation of the injunction.

8 MR. POCKER: It would not have been in violation
9 of the injunction. And I know Rimini's position is that some
10 of what they did solved all of your problems. That's
11 debatable, and we disagree with that.

12 THE COURT: Yeah, they said that it would be the
13 impact after November '18.

14 MR. POCKER: Sure. At this point they could be
15 dealing the Rimini 3.0 for all we know, and yet, instead of
16 just saying when we had the correspondence with them, yep,
17 we're all in compliance with the injunction, then maybe I
18 could see the Court saying, oh, I'm not sure we need to go
19 further.

20 But when we look at the kind of response they
21 gave us, which was essentially, "Well, you know, to the extent
22 we understand it, to the extent that it tracks Rimini I" --

23 THE COURT: Well, they're stuck between a rock
24 and a hard place because they're challenging the injunction
25 saying it's vague, so if they say definitively we're

1 complying, they've given up their position that it's vague.

2 MR. POCKER: Well, and nobody is saying you
3 can't continue your appeal to the Ninth Circuit or anything
4 else, but, in the meantime, an injunction was imposed, and
5 we're entitled to test compliance with it.

6 We've met the standard from the appropriate
7 cases that we've cited, and it doesn't take much, it doesn't
8 take a smoking gun. It does take a little bit of suspicion.
9 It can be done by circumstantial evidence, which we've done,
10 four different things about Rimini's conduct and statements
11 that gives us pause, and the answer to a question might be,
12 well, if you changed everything and you're so diligent or
13 whatever, why not say so or show us?

14 THE COURT: Right.

15 MR. POCKER: We get a red herring here with
16 Rimini II and Rimini I. Rimini I is an adjudicated case. We
17 have a judgment, we have a -- it's been upheld on appeal. We
18 have an injunction, and although it's being challenged, it's
19 still the law of the land.

20 Rimini II was this after-the-fact declaratory
21 relief action to get a blessing on a process that as of today
22 we're told isn't even really the process that Rimini Street is
23 using still. They say they've changed it yet again.

24 There's just so much uncertainty here, your
25 Honor.

1 And, again, it's a motion to open discovery.
2 We're not here to rule on the cloud or any of that other
3 nonsense.

4 THE COURT: Right.

5 MR. POCKER: And every one of these arguments
6 about, oh, you're preempting Rimini II, we are trying to do
7 this, we are trying to do that, they were made before Judge
8 Hicks, they were made before the Ninth Circuit, and they've
9 been rejected time and again.

10 So what we want now is what we're entitled to
11 which is to test and verify these latest pronouncements here
12 today that somehow additional changes have been made.

13 And as I've pointed out with the language in the
14 injunction, there's areas where nothing that Mr. Perry has
15 described today negates the infringement that is still ongoing
16 according to the very terms in the injunction, and we're
17 entitled to explore that.

18 If it winds up being a contempt proceeding, it
19 winds up being a contempt proceeding. Who knows what
20 discovery will show.

21 THE COURT: Well, okay, let me hear one last
22 word from Mr. Perry, and I think we'll start trying to go
23 through these discovery requests and see if we can find a
24 pattern or a reasonable way to do it.

25 MR. PERRY: Two quick points, your Honor.

1 First, the current injunction is identical in
2 substance to the 2016 injunction, okay?

3 Oracle has had full discovery from the beginning
4 of 2015 to the beginning of 2018. They know everything about
5 our systems, operations, practices, customers, clients.

6 THE COURT: I understand. But, I mean, you
7 know, if anything, in this field things change rapidly, right?
8 And so the injunction -- if they're going to prove you in
9 contempt, they have to show you did things after November '18.

10 MR. PERRY: Absolutely, your Honor. But to open
11 discovery they have to come forward with some evidence of
12 noncompliance, and they have all that discovery from the
13 two-year period, and they don't have a single thing that they
14 can bring to the Court and say, "Here, from all this discovery
15 we've already done we have found evidence, therefore we need
16 to see if you're still doing it."

17 THE COURT: Well, but, I mean, what about this,
18 I mean, you know, paragraph -- paragraph 5 on page 2 of the
19 injunction, docket 1166, as Mr. Pocker pointed out says,

20 "Rimini Street shall not reproduce, prepare
21 derivative works from, or use PeopleSoft software or
22 documentation on with or to any computer system other
23 than the specific licensee's own computer system."

24 You've told me here in court you're doing it on
25 the cloud.

1 MR. PERRY: And here's the most important point,
2 your Honor. Can I hand out -- would you mind if I handed out
3 a document?

4 THE COURT: Has the other side seen it?

5 MR. PERRY: I'll give it to them. They are all
6 documents in the record, I just put them on a slide for you.
7 Would you rather --

8 THE COURT: No, no, that's okay. I've got to
9 figure out what to do here.

10 You can give one to --

11 MR. PERRY: Mr. Pocker just said that we,
12 Rimini, have made these arguments --

13 THE COURT: Is it Rimini?

14 MR. PERRY: Rimini.

15 THE COURT: Oh, I've been pronouncing it wrong.
16 Rimini.

17 MR. PERRY: Everybody pronounces it differently,
18 your Honor.

19 THE COURT: Rimini. Okay.

20 MR. PERRY: Mr. Pocker just said that Rimini has
21 made these arguments to the district court and the Ninth
22 Circuit and had them rejected. They say that in their reply
23 brief, and that's the first slide I put in this little packet
24 is, is Oracle's current position that this argument has been
25 rejected by the district court.

1 Your Honor, they don't provide a citation for
2 that because it's false. The truth is 180 degrees opposite of
3 that, and I'm happy to walk through all of this, but I know
4 time is short. I'll just jump to the bottom line.

5 Slide 6, Judge Hicks ruled excepting -- I'm
6 sorry, in the bottom right corner, it's called Judge Hicks
7 Adopts Oracle's Representations.

8 THE COURT: Oh, I see, down here under two
9 fifteen -- which page are you on?

10 MR. PERRY: It's slide 6.

11 THE COURT: Slide 6. Mine says Ruling on Second
12 Injunction Motion? Maybe they're numbered --

13 MR. PERRY: Yes, Ruling on Second Injunction
14 Motion.

15 THE COURT: Okay. It's in the bottom corner,
16 okay.

17 MR. PERRY: There are four factors, as the Court
18 is well aware, to grant an injunction one of which is the
19 balance of hardships.

20 Rimini made the point that the balance of
21 hardships tipped in our favor because Oracle was trying to
22 prejudge the second case in the first case through the
23 injunction.

24 Oracle insisted -- and I've quoted on the
25 previous slides on the precise places where Oracle said over

1 and over again that the injunction is limited to the things
2 adjudicated in the first case, and Judge Hicks, as a necessary
3 predicate to the injunction, ruled that Oracle seeks to enjoin
4 only acts that have already been determined to be unlawful.

5 That is an order of the Court on which the
6 injunction is based. That order is what Oracle is trying to
7 undo today.

8 When Mr. Pocker provides an interpretation of
9 paragraph 5 on page 2 of the injunction, it goes clearly
10 beyond what was adjudicated in the first case. It's a change
11 in Oracle's position, they're estopped from making it. It's
12 wrong for reasons we've explained in the second case.

13 THE COURT: Well, are you saying that in Oracle
14 I -- or Rimini I Oracle took the position that it was okay to
15 use the cloud?

16 MR. PERRY: No, your Honor, the cloud was not at
17 issue. What was at issue in Rimini I was environments on
18 Rimini's own servers.

19 THE COURT: Own servers. Okay.

20 MR. PERRY: Right. The question in Rimini II is
21 whether the cloud constitutes the client's facilities.

22 THE COURT: Okay. But the -- okay. You say the
23 issue was what's going on on Rimini's own server. Mr. Pocker
24 is going to say the issue was what's going on on the
25 customer's server.

1 MR. PERRY: Right, your Honor. And it all comes
2 back to the license which Rimini -- this actually isn't a
3 copyright violation, it's not copyright infringement to host
4 something on a server, okay? This is a license dispute.

5 THE COURT: Right.

6 MR. PERRY: And ask yourself why do we have an
7 injunction against a breach of contract. There's another
8 oddity here, right, that we've got, that's a question before
9 the Ninth Circuit as well.

10 But the license actually says facilities, right?
11 And Judge Hicks interpreted that to mean the customer's
12 facilities, the facilities of which the customer -- and then
13 the Ninth Circuit said in a footnote in its opinion that means
14 that the customer has to have actual or constructive control
15 over those facilities.

16 THE COURT: All right.

17 MR. PERRY: So our position --

18 THE COURT: The cloud, they have constructive
19 control.

20 MR. PERRY: With the cloud they have
21 constructive control because they're paying for it, and, as I
22 said, Judge Hoffman agreed with a version of that as part of a
23 discovery dispute.

24 The important point for today, though, is Oracle
25 cannot come to the Court, we submit, and say that because we

1 are hosting on the cloud -- they don't even need any
2 discovery. They know all that. They have the contracts, they
3 have the relationships --

4 THE COURT: But they don't know since November
5 of '18.

6 MR. PERRY: Well, your Honor, if they really
7 think that's a violation, they could have moved for contempt
8 based on the evidence that they have, and, again, this is not
9 a disputed point.

10 THE COURT: But that's the point. They want to
11 do discovery on what's been going on since the injunction was
12 entered in November of '18. Why shouldn't they be allowed to
13 do that?

14 MR. PERRY: Because, your Honor, it's -- because
15 they can't get to where they need to go.

16 Again, it is the -- discovery to what end? If
17 they think that is a contemptuous act, in other words, an act
18 so clearly in violation of the injunction that a contempt
19 proceeding is warranted, then they should just bring a
20 contempt proceeding and we'll deal with that.

21 A contempt proceeding will result in a
22 determination and an appeal. We shouldn't have to spend
23 millions and millions of dollars on discovery.

24 This discovery is extraordinarily expensive,
25 your Honor. The parties collectively have spent tens of

1 millions of dollars. This last round, you know, involved
2 hundreds and thousands and millions of papers, documents,
3 witnesses, and so forth, and what they're asking for here is,
4 is again to test a proposition that is not actually in
5 dispute.

6 If cloud hosting is in contempt, let's tee that
7 up and decide it as a contempt motion. Why do we need
8 discovery?

9 THE COURT: Okay. So it sounds to me like maybe
10 you're proposing you sit down with Mr. Pocker and see if you
11 can get a stipulated set of facts that you believe the facts
12 would not support contempt and he believes the facts would
13 support contempt.

14 MR. PERRY: Your Honor, we have offered to sit
15 down with Mr. Pocker multiple times. They don't want to do
16 that.

17 THE COURT: Well, maybe I can order them to do
18 that.

19 MR. PERRY: I understand. We --

20 THE COURT: Let me see what Mr. Pocker thinks
21 about that.

22 MR. PERRY: Yes, your Honor.

23 THE COURT: I mean, at least shouldn't we give
24 it a shot here before we spend millions of dollars to do
25 discovery? If you can get an agreed set of facts, like, you

1 know, you've got to file a joint pretrial order, you agree to
2 the facts.

3 I mean, they apparently agree they're using the
4 cloud, you know, that's something you want to prove up, you
5 say that's in contempt of the order, right?

6 From November 2018 to the present Rimini has
7 been using the cloud to service his customers not limiting
8 itself solely to the customer's equipment. I think they'd
9 stipulate to that fact.

10 MR. POCKER: It's way beyond that, your Honor.

11 THE COURT: Well, what other facts do you need?

12 MR. POCKER: And, as a result, I don't know how
13 to quite address that. We'll just spend millions of dollars
14 plus hundreds of thousands more if we go through that process.
15 There is no way that we are going to agree on a stipulated set
16 of facts regarding what Rimini Street is up to. That's why we
17 want to do discovery.

18 THE COURT: Well, you are done -- but do you
19 need everything they're up to or do you just need enough to
20 hold them in contempt?

21 MR. POCKER: I mean, they're kind of the same --

22 THE COURT: No, not really. I've tried lots of
23 cases. You get enough evidence to prove your case, you don't
24 have to keep going on and on and on getting evidence in if you
25 want Judge Hicks to find they're in contempt.

1 MR. POCKER: Well, but that's the whole point,
2 your Honor. This is getting way super-complicated. All it
3 really requires is for them -- and we've raised this with
4 Mr. Perry. We're asking for what happened after
5 November 2018.

6 We asked them if they were in compliance. We
7 get a runaround. We get information that clearly
8 demonstrates they don't want to answer that question.

9 Unless we have the discovery mechanism to
10 actually seek the proof of what's going on there for five
11 months, only five months, and it's not burdensome, they've
12 been through this before.

13 Specifically they raise a problem in their
14 opposition with request number 6. "We do all these patches
15 and tax updates and all this stuff, it's a huge amount."
16 Well, that's the heart of the case, too, with respect to this
17 whole issue of cross-use.

18 THE COURT: All right.

19 MR. POCKER: So -- I --

20 THE COURT: Okay. Well, let's see. I may have
21 to -- you know, I like to rule on these from the bench, but I
22 may not be able to in this case. Go ahead and --

23 MR. POCKER: And I don't mean to -- you know,
24 any frustration you're hearing is with the adversary, not with
25 the Court's proposal. I just think it would not be a

1 productive way to go.

2 THE COURT: Yeah.

3 MR. POCKER: It's -- what we need here is very
4 straightforward. We don't need to litigate now what happens
5 in Rimini II versus Rimini I, and we've let fly or slide by a
6 few representations that you really -- rather than go back and
7 forth on a lot of them, if you have concerns about what
8 representations were made on behalf of Oracle in September
9 2015, we would invite the Court to go back and look at the
10 context of that as well.

11 We have never said everything has to be decided
12 in Rimini II with respect to some of these issues that are
13 coming up.

14 The context of all this, and you'll see this
15 from the docket, there was a motion to -- Rimini wanted to
16 bring in all the 2.0 changes in the first case. This is after
17 discovery was over, they wanted to bring it all in and say
18 this is proof of a noninfringing alternative. The parties
19 debated that.

20 The judge said -- Judge Leen said no, we're too
21 far down this road, we're not reopening discovery. That's an
22 entirely different context as to, oh, we're parceling, you
23 know, what gets tried here and what gets tried there.

24 And likewise with the discussion about
25 consolidating the cases, as the Court knows, cases are

1 consolidated or not consolidated for all kinds of reasons, and
2 it does not definitively define the scope of the issues in
3 either case, that there's millions of instances where cases
4 are not consolidated. The first case reaches some pretty
5 conclusive determinations either by the jury or the judge, and
6 they have an impact in a second case.

7 THE COURT: Sure.

8 MR. POCKER: And this keeps getting dredged up
9 here. He just keeps wanting to argue that the injunction is
10 flawed. We're here with -- we have an injunction. He has a
11 remedy. We want to enforce the injunction.

12 And if this Court doesn't allow us to go that
13 way, we're stuck with a situation where they get a de facto
14 stay, they go through another six months, a year, year and a
15 half, who knows, before the Ninth Circuit decides.

16 And three entities are harmed. You've got the
17 Court because its injunction is just being flaunted,
18 potentially flaunted by the behavior until we find out what
19 they're up to.

20 Second of all, you've got Oracle. The
21 infringement continues, the same stuff that we've been
22 litigating for now nine years. I signed the complaint in this
23 in 2010. I think I'm the only one left from the original
24 lawyers in this case.

25 And then, thirdly, the customers, because a part

1 of this -- and I know the Court is not down into the weeds on
2 this, but part of it is all this infringing material. If
3 Rimini is infringing and pumping it out there to all the
4 Oracle customers, they're putting them at risk as well, or
5 they're going to have to call it back or destroy it at some
6 point potentially, depending on how the second case or the
7 remedy that the Court finds if it finds contempt on the first
8 injunction.

9 So it's just --

10 THE COURT: I don't like the -- you know, to be
11 an agent for delay so why don't we go through some of these
12 requests for production first, and then the interrogatories,
13 and let me see if I can understand how they impact everything
14 we've talked about.

15 So request for production number one says,

16 "All documents concerning any changes to
17 Rimini's support processes for Oracle software and
18 support materials that Rimini planned in anticipation
19 of possible entry of the injunction or made in
20 response to the injunction."

21 Well, I mean, "planned in anticipation of
22 possible entry," that makes no sense, right? Because you say
23 you're limiting this to the time period after the injunction
24 was entered, right? Why would that be relevant to what you're
25 trying to find out?

1 MR. POCKER: Well, it is relevant as to whether
2 they think they're in compliance or not or what would be
3 necessary to place them in compliance.

4 So, yes, I think it is. If they're looking at
5 the proposed injunction and they're saying, "Oh, we better do
6 A, B and C because otherwise we're not going to be in
7 compliance," that's certainly relevant to their state of mind
8 and their intention with a lot of this as well as relevant to
9 whether or not they think they're in compliance at the present
10 time.

11 THE COURT: Well, I'm -- I think -- let me see
12 what Mr. Perry has to say.

13 What would be the burden of producing the
14 documents that would -- concerning changes that Rimini made to
15 the process, et cetera, made in response to the injunction, so
16 documents showing what you did in response to the injunction,
17 what would that involve?

18 MR. PERRY: You mean, after the --

19 THE COURT: Yeah, after November '18.

20 MR. PERRY: You know, other than there's going
21 to be a privilege problem, obviously, because the lawyers are
22 involved.

23 THE COURT: Right.

24 MR. PERRY: We can deal with that in the
25 ordinary course. That particular request is not in itself the

1 greatest. However, you know, it's part of a larger question
2 which is, you know, Oracle is looking for what we did and then
3 tell us why we did it wrong rather than tell us what we should
4 do.

5 But that one, as the Court has just limited it,
6 is not the straw that would break the camel's back.

7 THE COURT: Yeah, I think you should be able --
8 but you need to produce documents. It's not an interrogatory,
9 it's a request for production of documents.

10 MR. PERRY: Your Honor, and as I stand here, I
11 don't know that such documents exist. But, you know, we'd
12 have to go look for them, and that's expensive, and we
13 would -- you know, all of these things have burdens.

14 THE COURT: Let's look at the next one then.
15 Let's see.

16 "Identify all persons involved -- documents
17 sufficient to identify all persons involved --
18 documents sufficient to identify all persons involved
19 with any changes to Rimini's support process" --

20 Okay. Well, that's (inaudible), "or made in
21 response...including name, title, responsibility" -- okay.

22 Mr. Pocker, why do you need all that? I don't
23 understand why you would need that.

24 MR. POCKER: Well, your Honor, I anticipate that
25 if, in fact, we determine that what we see and receive from

1 them indicates a violation of the injunction --

2 THE COURT: Right.

3 MR. POCKER: -- that I don't see Rimini Street
4 saying, "Oh, yeah, you're right."

5 We're going to have to present evidence and
6 prove the case, and this is the standard type of discovery
7 that would be in association with, okay, who decided to change
8 the system, who are the people with the most knowledge, and
9 those would be the people who might have to testify or,
10 depending on what discovery the Court allows, give a
11 deposition at some point.

12 THE COURT: Okay. Well, you know, so maybe -- I
13 think what I would like to do is try and do this at least in
14 some stages. Why don't we hold that one for later. If
15 actually you do this first discovery and you find something
16 that you think deserves to go deeper, then we can talk about
17 it.

18 Okay. "A copy of Rimini's" -- now, I can say
19 these because these were blacked out on these, but the motion
20 to seal has been denied, so it would be,

21 "A copy of Rimini's AFW database" or "AFW
22 database, AFW source code, and the new AFW FTP
23 folders related to...since November 5th."

24 Okay. That seems pretty well defined and
25 reasonable. What's the problem with that one, Mr. Perry?

1 MR. PERRY: Your Honor, the AFW database is a
2 massive dataset -- it's terabytes and terabytes, okay?

3 It is -- and here is an example of -- AFW didn't
4 even exist at the time of the judgment in Rimini I. This is
5 part of process 2.0.

6 So this is -- literally to say that this would
7 lead to discoverable evidence about contempt -- how could we
8 be in contempt for doing practices, you know, that didn't
9 exist?

10 THE COURT: Well, because if those new practices
11 actually violate the terms of the injunction, it's not a
12 defense to say these are new practices.

13 MR. PERRY: Your Honor, we do think it is a
14 defense to say that for the precise reason that the Court
15 limited the injunction to the things that were adjudicated in
16 the first case. I mean, that's part of the order that --

17 THE COURT: All right. Let me look at this
18 here.

19 MR. PERRY: You know, if we're going to revisit
20 that, then the whole injunction is going to have to be
21 modified.

22 THE COURT: Because Judge Hicks said, "Because
23 Oracle seeks to enjoin only acts that have been already
24 determined to be unlawful."

25 So -- okay. So you're saying AFW database, AFW

1 source code, and AFW FTP folders didn't even exist.

2 MR. PERRY: Right.

3 THE COURT: So the Court couldn't have
4 determined -- but the problem is -- at least to my mind, and,
5 you know, correct me if I'm wrong, the AFW database, source
6 code, and these folders are not acts, they're evidence.

7 MR. PERRY: No, your Honor. They are practices,
8 they are the replacement for the so-called generic cross-use
9 that was at issue in the first case.

10 They are squarely -- and there's a summary
11 judgment motion dealing with AFW in the second case. This is
12 why Oracle is really trying to use this contempt proceeding to
13 litigate the second case, you know, without a jury which we're
14 entitled to, and --

15 THE COURT: Right.

16 MR. PERRY: -- without all the protections that
17 we're entitled to.

18 THE COURT: Well, hopefully Judge Hicks would
19 not let that happen. I'm just doing the discovery.

20 But, okay, I can understand why a source code
21 might be a process, I guess, I'm not a computer engineer, but
22 how can a database be a process? A database is a bunch of
23 data, right?

24 MR. PERRY: Yeah, it's a huge dataset.

25 And, again, your Honor, Oracle has the AFW

1 database or has had access to the AFW database for 2015 to
2 2018. If they think anything in there is in violation of the
3 injunction, let them bring a contempt proceeding. Again,
4 we --

5 THE COURT: There couldn't be a contempt
6 proceeding until -- it has to be used after the injunction.

7 MR. PERRY: Then ask us if there's been any
8 change from the evidence they already have.

9 Again, we're being asked to embark after the
10 close of discovery in the second case, after the end of the
11 judgment in the first case pending appeal --

12 THE COURT: I understand that. We're past that.
13 I'm going to order some discovery.

14 So I think what I'm going to do here is, to the
15 extent the AFW database has changed since the last production
16 of that database, which I think must have been shortly before
17 the -- no, let's just say it this way.

18 To the extent the AFW database has changed after
19 the date of the injunction that was entered in this case on
20 August 15th, is that right? August 15th, 2018, those need to
21 be produced, the AFW database that's related to Rimini's
22 support of Oracle software and support material since
23 November 5th, 2018.

24 But I'm not going to order the source code or
25 the FTP folders. If you find something in the database that

1 you can demonstrate to me -- because I don't even understand
2 what it is right now.

3 MR. POCKER: Your Honor, this request is the
4 same as one that was made in the course of Rimini II, and this
5 is very easily complied with. The burdensomeness is --

6 THE COURT: I'm not doing burdensomeness, I'm
7 doing scope so we'll just do the database for now and -- okay.

8 The next one is read-only access credentials to
9 all online resources used by Rimini.

10 What is that, read-only access credentials? Is
11 this like metadata, keeping track of who got in and did
12 things? Is that what it is?

13 MR. PERRY: You're asking me, your Honor?

14 THE COURT: Anybody. I don't know what it is.

15 MR. POCKER: Well, I can offer this. DevTrack
16 and SharePoint are two of the mechanisms at Rimini Street
17 that --

18 THE COURT: SharePoint I'm familiar with.

19 MR. POCKER: Right.

20 And then monitor the activity that is in
21 question here is, that is, how is Rimini Street servicing its
22 Oracle software clients so --

23 THE COURT: But -- you're trying to figure out
24 going in and doing stuff, you want to get the --

25 MR. POCKER: Sure, sure.

1 THE COURT: We can do that --

2 MR. POCKER: I'm sorry.

3 THE COURT: We can do that during the second
4 part.

5 Okay. "All documents Rimini provided to its
6 customers" -- why do you need number 5, tax and regulatory
7 updates?

8 MR. POCKER: Why would we need that?

9 THE COURT: Yeah.

10 MR. POCKER: Is that the question?

11 THE COURT: Yeah.

12 MR. POCKER: That's communications with the
13 customers about the tax updates and all the rest of that.

14 THE COURT: How does that to do with the
15 injunction? What does that have to do with the injunction?

16 MR. POCKER: Well, the injunction prohibits the
17 dissemination and distribution of infringing materials. This
18 is associated with that.

19 THE COURT: All right. I think it's too remote
20 so I'm not going to order that.

21 "All programs including software tools" --

22 MR. POCKER: And the other thing that it -- if
23 we may revisit that.

24 THE COURT: Yeah, sure.

25 MR. POCKER: The other thing that it helps us

1 with is the notion of cross-use. If two customers receive the
2 same files, that's evidence of attempts to cross-use. So
3 that's where that, in conjunction with request number 6, is
4 relevant to this.

5 THE COURT: They receive the same files?

6 MR. POCKER: Oh, yeah. That's exactly what
7 cross-use is, is that if you develop it for, you know, Union
8 Oil, and then you wind up using that same product, send it to
9 Texaco, that's cross-use --

10 THE COURT: But there will be --

11 MR. POCKER: -- under the injunction.

12 THE COURT: But there will be -- and this is
13 where you're getting into the thing that you're saying even if
14 they started with the whiteboard and created the same file,
15 although they didn't just copy it over somehow --

16 MR. POCKER: We'd be able to tell from --

17 THE COURT: Yeah, the metadata.

18 MR. POCKER: -- from this type of evidence as to
19 whether all the data is sending the same stuff to all the
20 different customers, and, you know, the details and what's in
21 a whiteboard and what's in somebody's brain, that's irrelevant
22 to what we're looking for here.

23 THE COURT: You want to see the -- sort of the
24 fingerprints in the file.

25 MR. POCKER: Sure. And --

1 THE COURT: Okay. Here's what I'm going to do
2 on that. You're going to have to get together with Mr. Perry
3 on this one, and I -- you say it's difficult, but you're both
4 professionals here.

5 I would consider some type of sampling on this.
6 I'm not going to make -- you know, produce every, you know,
7 document that's been sent to a customer having to do with
8 this, but if you could come up with some kind of random way to
9 sample it, you know, get a certain percentage of them, and you
10 can look at them and see if there's a pattern, I guess, that's
11 legitimate, but not make you do the whole thing so --

12 MR. POCKER: Well --

13 THE COURT: -- that's granted conditionally on
14 some type of sampling agreement.

15 MR. POCKER: And ultimately we may be seeking
16 all of them. That's the meat of the violation.

17 THE COURT: Well, see what you get in the
18 sample.

19 MR. POCKER: Your Honor, the other point with
20 respect to all of these, and this is just for the Court's
21 convenience, on that very same page of the injunction,
22 paragraph 6 talks about the restrictions on Rimini Street with
23 respect to this cross-use notion. That may be helpful in
24 analyzing whether or not you think these requests are relevant
25 to a potential violation of the injunction.

1 THE COURT: Okay. Well, like I say, why don't
2 you do some sampling, we'll see what shows up on that one.

3 Okay. "Policies or memoranda that Rimini wrote
4 or developed in response to the injunction."

5 Okay. Well, and they said, I think, there would
6 be an attorney-client privilege concern about this, right, to
7 the extent someone is advising a client how to abide by an
8 injunction? You wouldn't -- couldn't order them to produce
9 that, right?

10 MR. POCKER: Well, to the extent that it's a
11 privileged document, I'm sure there will be a privilege log
12 and potentially litigation with respect to that.

13 But also remember that the injunction required
14 certain notices to be sent to the employees of Rimini Street,
15 that's invoiced within here, and that's -- did they do it,
16 let's see what it is, let's see what they've told them.

17 THE COURT: I think that's appropriate, and, you
18 know, they can do a privilege log to the extent it's required.
19 So that one will be ordered.

20 What does that mean to "show the location of
21 each Oracle software environment"?

22 MR. POCKER: Well, that's --

23 THE COURT: That's the customers?

24 MR. POCKER: Well, it's the environment in which
25 these changes to the Oracle software, Oracle software

1 modifications are made. Some of them may be on customer's
2 location, some may be at Rimini Street, some may be in a
3 cloud, some may be on WinStream.

4 And, again, the very injunction that we're
5 seeking to enforce restricts whether those environments can
6 exist, and without this information we don't have the corpus
7 to decide where all this stuff is and whether there's a
8 violation of the terms of the injunction.

9 They've provided this information before in the
10 other case. It's not like it's a new revelation to them, and
11 especially given the fact that now we're entitled to update
12 their scenario on how they're doing business since November of
13 2018.

14 THE COURT: Well, let's hear from Mr. Perry.
15 What do you have to say on number 8, Mr. Perry?

16 MR. PERRY: Your Honor, I think 5 and 8 go a
17 little bit together, if you will. Five was all the
18 communications with our customers, and 8 is where they are.

19 THE COURT: Right.

20 MR. PERRY: And between those two, that's
21 everything in the company, that's our entire business.

22 THE COURT: It seems like it.

23 MR. PERRY: Okay. Because what we do is provide
24 updates and fixes and so forth for our clients.

25 THE COURT: Yeah. I'm not going to order that

1 now.

2 And then the one about in answering
3 interrogatories, that's wrong, too.

4 You know, what we're going to do on those is I'm
5 going to ask Aary (phonetic) to send you guys an audio file of
6 my discussion of what we just did here, and that will be the
7 ruling on those requests for production.

8 Okay. Let's go to the interrogatories. Let's
9 see --

10 MR. POCKER: Your Honor, since there is this
11 objection to providing copies of all the fixes because that's
12 the business they do, perhaps an accommodation might be to
13 order them to produce a list of all those fixes that they've
14 done, fixes and updates they've done since November 2018.

15 THE COURT: So that would be an interrogatory.
16 Did you ask that interrogatory?

17 MR. POCKER: Haven't yet.

18 THE COURT: Okay. Maybe you can ask that
19 interrogatory. Maybe that's something you can do and we can
20 talk about it later.

21 MR. POCKER: Well, if we're permitted discovery,
22 we can do that.

23 THE COURT: Okay. Well, you can pose that
24 interrogatory, and we'll see what they say.

25 Okay. That will be part of the ruling on that

1 production.

2 Okay. Number one, "State whether Rimini made
3 any changes to its support processes." What do you mean by
4 support processes?

5 MR. POCKER: Which one are you asking about,
6 Judge?

7 THE COURT: Interrogatory 1 says whether Rimini
8 made any changes to its support processes. What do you mean
9 by sport processes?

10 MR. POCKER: Support processes, what they do,
11 their business is they've got clients that license our
12 software.

13 THE COURT: Right.

14 MR. POCKER: You can get your support from
15 Oracle, you get support from them. The process by which they
16 support them, that is, provide them with updates, fixes,
17 whatever work they need done on that, it's kind of the meat of
18 their business.

19 THE COURT: Right. So it's really basically all
20 they've done in their business. And there's no time limit on
21 this one.

22 MR. POCKER: Well, it is actually. We asked
23 whether they have made any changes to the support processes in
24 response to the injunction, so that would be after November
25 2018.

1 THE COURT: Or in anticipation of the
2 injunction.

3 MR. POCKER: Possible entry of the injunction
4 which also, you know, goes back to when we filed the motion
5 for the injunction, and I believe it was the spring of 2018,
6 March 2018, so it's time bound and --

7 THE COURT: And they're saying that, you know,
8 the changes they made when they went to 2.0 -- I mean, their
9 position is that when we went to 2.0, you know, that dealt
10 with a lot of the issues in the case, whether they did it in
11 anticipation of the injunction or not.

12 I don't know, it seems like it's -- this is like
13 give us all the evidence that's at issue in Rimini II.

14 MR. POCKER: Well, you're certainly free to
15 limit it in scope of time, but it -- clearly it's in
16 anticipation of this injunction. We proposed this injunction
17 first in 2016, the second time in 2018, but it's a factual
18 question as to, okay, what changes did you make.

19 THE COURT: You know, these are awfully broad.

20 You know what, I am going to deny the -- is this
21 here on a motion to compel or protective order? I can't
22 remember. We're here on motion to compel? It's your
23 commotion to compel, right? Or are we here on a protective
24 order?

25 MR. POCKER: I'm sorry, motion to compel, your

1 Honor.

2 THE COURT: Is it a motion to compel these
3 interrogatories or motion for protective order? It's leave to
4 take the discovery --

5 MR. POCKER: Leave to take.

6 THE COURT: Leave to take the discovery.

7 MR. POCKER: Yeah. We're just here to start the
8 process, your Honor. Obviously this whole back and forth
9 about is this one okay, is that one okay, is down the road.

10 THE COURT: Right.

11 MR. POCKER: What we want to do is start this
12 process. We have these exemplaries basically that say this is
13 a snapshot of what we would do if you let us do discovery.

14 THE COURT: Right.

15 MR. POCKER: And I've been corrected by my
16 cocounsel, the time limitation is in the interrogatories, it's
17 in the paragraph right before they're set forth, a time period
18 beginning August 14th, 2018, which is the date the Court
19 originally entered the injunction prior to all the stay back
20 and forth.

21 THE COURT: So it's in the definition section
22 you say? Is what you're saying?

23 MR. POCKER: Yeah, so it's the very --
24 instructions, it's paragraph 5 --

25 THE COURT: Yeah, okay.

1 MR. POCKER: -- in the instructions on page --

2 THE COURT: Okay. Okay. Yeah, I should have
3 gone back -- I don't have that page in front of me.

4 Here's what I think we'll do. I'm going to
5 allow you to do some discovery, allow you to do the stuff I
6 said today you could do.

7 We'll hold off on the interrogatories except you
8 can ask that one interrogatory about what was the people or
9 the -- I can't remember, what was the interrogatory -- I
10 said -- you said you wanted him to prepare a list, and I said
11 it needed to be an interrogatory.

12 MR. POCKER: Okay.

13 THE COURT: Do you remember what --

14 MR. POCKER: Your Honor, since that -- all
15 right. So the only interrogatory that, you know, is
16 countenanced at this time is interrogatory number 1; is that
17 correct?

18 THE COURT: No, no, it was a request for
19 production, I'm sorry. I got --

20 MR. PERRY: Your Honor, Mr. Pocker asked whether
21 they could inquire as to a list of the fixes or updates
22 provided since November '18. The Court said you would
23 entertain an interrogatory to that effect.

24 THE COURT: Right.

25 MR. PERRY: You know, more broadly, we're doing

1 all this in real time. I mean, this is -- we had made a meet
2 and confer objection here for a real reason.

3 THE COURT: Sure.

4 MR. PERRY: If the Court's ruling is that some
5 discovery will be allowed, we disagree with it, but we accept
6 it, then we ought to get together and sort this out, right?
7 And we haven't had any of these conversations about scope,
8 timing --

9 THE COURT: Okay.

10 MR. PERRY: -- what's available, what's not
11 available.

12 And while we would be more than happy to deal
13 with the Court, I'm not sure it's the best time -- use of
14 anybody's time as opposed to trying to hash out a system and
15 coming back with any disagreements.

16 Because we understand the Court's ruling, right,
17 if I could restate it, just make sure I understand it, Oracle
18 is going to be permitted some limited discovery into
19 essentially injunction compliance after November 18th --
20 November 2018 when the injunction went into effect in the
21 general area described in the proposed discovery, but the
22 details, why don't counsel sort them out to see what's even
23 available, what's burdensome and what's not, and come back to
24 the Court if we have any disputes.

25 And that would be the normal way, we would

1 submit, to do that having secured the Court's clarification,
2 but some discovery, again, we disagree but we got it, is going
3 to be permitted because -- well --

4 THE COURT: Yeah, I appreciate that offer. Are
5 you good with that, Mr. Pocker?

6 MR. POCKER: Here's what I would anticipate
7 happening. You've granted us leave to do discovery. You've
8 blessed a couple of those requests but not all of them that
9 are in the --

10 THE COURT: Right.

11 MR. POCKER: -- requests --

12 THE COURT: Right.

13 MR. POCKER: If you grant us permission to do
14 discovery, we will then serve discovery requests, and then the
15 meet and confer will have to happen, and we'll have to go
16 through all of that.

17 I noted before there was a lot of discussion
18 about how Oracle already knows all this stuff from Rimini II
19 that can be used in this -- the problem is when you know that
20 in Rimini II.

21 So is Rimini at this point willing to stipulate
22 that we can use everything in Rimini II, the protective order
23 that can be modified and we use it in Rimini I? That would
24 short circuit an awful lot of this.

25 THE COURT: Right, but it still won't get you

1 things after November of 2018.

2 MR. POCKER: No, but it will certainly address a
3 lot of the concerns we have.

4 So, I don't know, if -- since they seem to think
5 we know all this and that's why we shouldn't be able to do
6 this in Rimini I, are they willing to stipulate that we can
7 use all that in Rimini I?

8 THE COURT: Okay. Here's what I'm going to do.
9 I guess to the extent I'm going to grant the motion to -- for
10 Oracle to take some limited discovery, I think in our
11 discussion of the different requests and whatnot, you can
12 see -- I think you should try to structure it in a way that,
13 you know, you get the lay of the land without trying to get
14 all the discovery you would possibly need in order to have a
15 contempt hearing, just, you know, do some scouting.

16 I would recommend you use some surveying
17 sampling type process, if you can come up with that. I think
18 that would be really useful.

19 There may still be some facts you could
20 stipulate to, like the use of the cloud. I can't imagine you
21 couldn't stipulate to that fact, everyone has said it here
22 multiple times, work something up like that.

23 If you file a report back to the Court on what's
24 happening in maybe, what, 30 days, would that be enough time?

25 MR. POCKER: Well, your Honor, if, in fact, we

1 craft discovery -- if we're now granted permission to perform
2 discovery, then that would take the normal course, we would
3 serve requests for production and interrogatories.

4 THE COURT: Well, we would need a discovery plan
5 and scheduling, then, I guess, right? How much time you're
6 going to do it, how many interrogatories, how many requests
7 for production. Maybe you can work out something like that
8 and have me approve that so at least I know what's going on,
9 and --

10 MR. POCKER: Okay. If that's the order of the
11 Court, then that's how we'll proceed.

12 THE COURT: No, I'm just -- you know, I like to
13 work with counsel. You can see it's very difficult for me if
14 you want me to say answer this, don't answer that, ask this or
15 that. You know, you know your cases much better than I do.
16 You run a big risk of me going off one way or another on it.

17 So I would recommend you come up with a good
18 plan, and, you know, the simplest thing would be just give me
19 a discovery plan and scheduling order, you're going to take
20 discovery for this much time, and then motion for contempt, if
21 there is one, will be due at this time, and something like
22 that, that's fine.

23 You can stipulate to some facts, that would be
24 helpful, too, save a lot of time and money.

25 All right? So -- so forget about -- go ahead.

1 MR. PERRY: I'm sorry, your Honor, one
2 housekeeping matter.

3 On the motion to seal, I'm told there may be an
4 exhibit or two that may be an issue or may not be an issue.
5 May we have, with the Court's permission, a day to confer on
6 our side and with Mr. Pocker? I may have spoken too rashly in
7 saying I had no issue with the motion to seal.

8 THE COURT: Okay. Well, yes, let's just be
9 clear. Okay. We'll talk about the motion to seal first, and
10 then we'll go back and try to wrap up what's happening on the
11 other motion.

12 MR. PERRY: Thank you.

13 THE COURT: I don't know if -- I'm trying to
14 find -- it's a motion to seal what they filed which was --
15 were things that -- if I remember right, Rimini filed it,
16 there were things that Oracle defined as confidential.

17 There's nothing in the record for me to find
18 good cause. I have to make a finding -- you know, just
19 because the parties agree to keep something sealed, I have to
20 look out for the public's interest. I have to say there's
21 good cause.

22 So, let's see. What number is the sealed -- it
23 would probably be better to take care of it now if I can.

24 MR. PERRY: Your Honor, I believe it is Oracle
25 filed the motion to seal Rimini stuff that's been declared

1 confidential.

2 THE COURT: I had it backwards? Okay.

3 MR. PERRY: And we think we're okay with that.
4 We would just like to go make sure -- to get it exactly right.

5 MR. POCKER: These things sometimes seem
6 counterintuitive to us, but we're only saying it's sealed
7 because they say it should be.

8 THE COURT: Right.

9 MR. POCKER: And then normally they would then
10 file some sort of response to our motion saying that's done
11 right, here's why.

12 THE COURT: Right. That's why it has to be
13 sealed, right.

14 So there's 13 exhibits that were filed under
15 seal, and you're not prepared today to tell me why they need
16 to be --

17 MR. PERRY: Your Honor, what I said today was we
18 didn't file a response on purpose. My colleagues tell me we
19 just want -- if we could just have 24 hours just to make darn
20 sure, because once the cat's out of the bag, it's out of the
21 bag.

22 THE COURT: No, I understand.

23 MR. PERRY: But I don't think I have an issue.

24 THE COURT: You see that puts me in a problem
25 because I have to make a finding that there's good cause.

1 So here's what I'm going to do. If the parties
2 agree -- I assume you can agree on this, that there's good
3 cause to seal something, or at least you don't oppose the
4 sealing of it, file a joint something that tells me why
5 there's good cause to seal this.

6 MR. PERRY: Thank you, your Honor.

7 THE COURT: And I'll look at it, and if I think
8 there's good cause, I'll seal it, okay?

9 MR. PERRY: Okay.

10 THE COURT: So that is going to be under
11 submission pending the supplement.

12 Then on the discovery motion, I am going to
13 permit discovery. I've given some guidance what I think about
14 the proposed sample discovery. I hope the parties take that
15 into consideration, get together, come up with a plan, give me
16 a discovery plan and scheduling order that includes a
17 discovery cutoff date and then a date for filing a contempt
18 motion, and if you don't file a contempt motion by -- you
19 know, that's a deadline so they don't have to keep worrying
20 about it.

21 Thirty days to get that in to me?

22 MR. PERRY: I think that should be fine.

23 THE COURT: What date would that be, Aaron?

24 I wish I had a better handle on it, but all this
25 computer stuff, you know, is a little -- a little daunting.

1 MR. POCKER: Welcome to our world, your Honor.

2 THE CLERK: That would be Monday, May 6th, your
3 Honor.

4 THE COURT: Monday, May 6th. Okay. Get that in
5 by then, then you can do some discovery, and if you need
6 something else, just file a motion.

7 MR. POCKER: Thank you, your Honor.

8 MR. PERRY: Thank you.

9 THE COURT: Thank you.

10 -o0o-

11

12 I certify that the foregoing is a correct
13 transcript from the record of proceedings
in the above-entitled matter.

14 /s/Margaret E. Griener 4/13/2019
15 Margaret E. Griener, CCR #3, FCRR
16 Official Reporter
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